

STATE OF MICHIGAN  
COURT OF APPEALS

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KRISTIN LYNN DONALDSON,

Plaintiff-Appellee,

v

MARK P. DONALDSON,

Defendant-Appellant.

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UNPUBLISHED

September 16, 2003

No. 241063

St. Clair Circuit Court

LC No. 01-002212-DO

Before: O’Connell, P.J., and Jansen and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, asserting that the trial court erred in its division of the marital property. We affirm.

Important to our review of several issues, a trial court’s factual findings in a divorce case will be upheld unless they are clearly erroneous. MCR 2.613(C). However, a dispositional ruling should be affirmed unless we are left with the firm conviction that it is inequitable. *Stoudemire v Stoudemire*, 248 Mich App 325, 336-337; 639 NW2d 274 (2001).

Defendant first argues that the trial court erred by using the date of the complaint for divorce rather than a later date, such as the date of judgment, as the “valuation date” of the parties’ marital property. We disagree. While marital assets are typically valued as of the time of trial or entry of judgment, a trial court may, in its discretion, use a different date. *Gates v Gates*, 256 Mich App 420, 427; 664 NW2d 231 (2003); *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997). Considering that this was a short-term marriage with no children, the trial court reasonably concluded that the date of the divorce complaint represented the last effective date of the relationship. Therefore, the trial court did not abuse its discretion when it determined the value of various marital assets according to their value as of that date.

Defendant next argues that the trial court should have awarded him an automobile because plaintiff attempted to “conceal” it. Defendant alternatively suggests that the trial court erroneously failed to award him money for time he spent working on the car. We disagree. First, there is simply no factual basis for defendant’s assertion that plaintiff concealed this car by

giving it to one of her sons as a gift. There was no evidence that she gave the car, which she owned before the marriage, to her son in a secretive manner or attempted to hide the gift from defendant.<sup>1</sup> Further, accepting arguendo that defendant spent four hours working on the car, we are not left with a firm conviction that the trial court inequitably failed to award defendant money as particularized compensation for the work. It is axiomatic that spouses in a marriage typically perform various voluntary services for the benefit of each other. We consider it manifest that, in considering the contributions of the parties to a marriage and attempting to fashion an equitable property division, the trial court should focus on the overall contributions of the parties, not on particularized compensation for a multitude of isolated incidents.

Next defendant argues that the trial court erred by admitting into evidence two repair estimates plaintiff proffered for damage to the marital home and denying his request for an inspection to counter plaintiff's allegations that he caused the damage. However, any error in this regard was rendered harmless by the trial court's failure to award any amount to plaintiff based on the alleged damage. See *Zdrojewski v Murphy*, 254 Mich App 50, 64; 657 NW2d 721 (2002).

Defendant argues that the trial court abused its discretion by excluding from evidence a document related to the value of the marital home, so remand is necessary to reevaluate the home's division in light of the document. We disagree. Assuming arguendo that defendant proffered sufficient evidence to support the document's admission, the document would not render the trial court's asset division inequitable. Defendant concedes that the assessment does not accurately reflect the home's actual value but only suggests a rise in the assessed value from which the court could infer a corresponding rise in actual value. To the diluted value of this document we add the de minimus increase in value the document reflected during the relevant dates; defendant's contribution of only one mortgage payment; and the trial court's grant to defendant, without division, of his asset-rich business. Considering the trial court's division of assets in this light, we do not find an inequitable result. *Stoudemire, supra*.

Next, defendant claims that the trial court erred by not ruling on his requested amendments to a proposed qualified domestic relations order (QDRO). We disagree. Defendant included substantially all of his unorthodox modifications in his written closing argument, so the trial court considered them. Defendant's claim of error lacks factual foundation, and we fail to find any inequity in the simple split ordered by the trial court.

Defendant claims that the trial court erred by failing to consider that he made one monthly house payment of \$867, and by failing to award him any of the \$400 reduction during the marriage in the principal debt owed on the marital home's mortgage. Plaintiff owned the home before the marriage, her annual salary was \$32,000 at the time the parties married, and she shared equally with defendant the household chores. Defendant, however, brought only slightly more than \$4,000 into the marriage and did not generate any income for the couple.

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<sup>1</sup> We note, however, that, contrary to what defendant suggests, even if a party wrongfully attempted to hide assets, this "does not give rise to an automatic forfeiture." *Sands v Sands*, 442 Mich 30, 36-37; 497 NW2d 493 (1993).

Accordingly, there is no reasonable basis to conclude that it was inequitable for the trial court not to credit defendant specifically for a one-time mortgage payment of \$867.

Defendant also argues that the trial court should have awarded him half the value of a dog that plaintiff owned before the marriage because he helped care for the dog and taught it tricks and other tasks. We find no error and reiterate the unreasonableness of basing a property division on compensation for the performance of isolated tasks.

We likewise reject defendant's argument that he should have been awarded money as reimbursement of certain bills that he claims he paid and for a tax refund received by the parties during the marriage. As we previously discussed, it is clear that plaintiff's income financed the great bulk of household expenses in light of her annual salary of \$32,000 at the time the parties married. Accordingly, we are not left with a firm conviction that the trial court inequitably failed to award defendant money under these circumstances.

Next, defendant is not entitled to relief on the basis of his one-sentence argument claiming that the trial court abused its discretion by not ruling on two motions for reconsideration. By utterly failing to present any type of reasonable argument regarding this "issue," defendant has abandoned it. *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003).

Defendant also argues, in effect, that the trial court erred by failing to enforce two requests for production of documents that he made to plaintiff, and by failing to sanction plaintiff or her counsel in this regard. We disagree. We review a trial court's decision regarding discovery for an abuse of discretion. *Westlake Transportation, Inc v Public Service Comm*, 255 Mich App 589, 609; 662 NW2d 784 (2003). According to MCR 2.310(C)(1), a request for production of documents "must list the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity." On their face, defendant's requests failed to meet this standard. Accordingly, we conclude that the trial court did not abuse its discretion by declining to enforce defendant's awkward and unduly expansive request for production of documents. It follows that the trial court did not abuse its discretion by failing to impose sanctions for noncompliance.

Finally, defendant argues that the trial court improperly initiated ex parte communications with the parties. We agree, but conclude that defendant is not entitled to relief because it is apparent that he was not substantially prejudiced. Near the end of trial, the trial court directed the parties to submit written closing arguments without "exchanging documents," that is, without providing a copy to the opposing party. The parties then did so. The trial court erred when it required and received ex parte communications, because this procedure involved each party communicating privately to the court without the other party being informed of what was communicated, thereby precluding a direct response to the communications. See *Grievance Administrator v Lopatin*, 462 Mich 235, 262; 612 NW2d 120 (2000). Nevertheless, we conclude that the error does not entitle defendant to relief. *Zdrojewski, supra*. Defendant was allowed to present arguments in his written ex parte closing, so both parties shared the advantages and disadvantages of the erroneous ruling. Further, plaintiff's closing argument did little more than accurately summarize the evidence presented at trial. While plaintiff requested in her ex parte closing that the trial court grant solely to her a \$600 income tax rebate and her 401(k) plan, the trial court awarded defendant a portion of each of those items. Thus, despite the trial court's

error, it is apparent that the court was not unduly influenced by plaintiff's ex parte communication, so we find no reason to upset the trial court's final award.

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Karen M. Fort Hood